

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KIRK D. ROBINSON,

Petitioner,

v.

TAGGART BOYD, Warden of RTC; and
ROB JEFFREYS, Director of Corrections,
Nebraska,

Respondents.

8:22CV412

ORDER

This matter is before the Court on remand from the Eighth Circuit Court of Appeals ([Filing No. 82](#)) for a determination of whether to issue a certificate of appealability with respect to Petitioner's appeal of this Court's denial of his Motion for Relief from Judgment. (See [Filing No. 78](#); [Filing No. 79](#).)

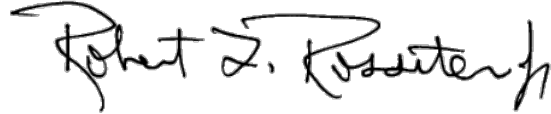
A certificate of appealability is required to appeal from "the final order in a habeas corpus proceeding" brought pursuant to 28 U.S.C. § 2254. 28 U.S.C. § 2253(c)(1); *see also* 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)(1). The Eighth Circuit has concluded that a certificate of appealability is required to appeal from the denial of a Rule 60(b) motion in a habeas corpus proceeding. *See United States v. Lambros*, 404 F.3d 1034, 1036–37 (8th Cir. 2005) (requiring certificate of appealability for appeal from denial of Rule 60(b) relief in § 2255 context). The standards for certificates (1) where the district court reaches the merits or (2) where the district court rules on procedural grounds are set forth in *Slack v. McDaniel*, 529 U.S. 473, 484–85 (2000).

In this case, Petitioner has failed to make a substantial showing of the denial of a constitutional right. The Court is not persuaded that the claims raised in Petitioner's Rule 60(b) motion are debatable among reasonable jurists, that a court could resolve the claims differently, or that the claims deserve further proceedings. Accordingly,

IT IS THEREFORE ORDERED that the Court will not issue a certificate of appealability in this case.

Dated this 4th day of February 2024.

BY THE COURT:

A handwritten signature in black ink, reading "Robert F. Rossiter, Jr." with a stylized flourish at the end.

Robert F. Rossiter, Jr.
Chief United States District Judge